

**LETTER OPINION**  
**2006-L-10**

March 22, 2006

The Honorable Joel C. Heitkamp  
State Senator  
9457 West Ridge Road  
Hankinson, ND 58041-9514

Dear Senator Heitkamp:

Thank you for your letter asking whether the Superintendent of Public Instruction may make payments to the Mantador Public School District (District) for the second and third years the district is nonoperational. You also asked whether the District has a right to receive payments under a law repealed by the 2005 Legislature because the District decided to become nonoperational based on the expectation it would receive payments for three years under that law. For the reasons stated below, it is my opinion that the Superintendent of Public Instruction may not make payments to the Mantador Public School District (District) for the second and third years the District is nonoperational. It is my further opinion the District has no right to receive payments under the repealed law.

**ANALYSIS**

Section 15.1-27-33, N.D.C.C., enacted in 2001,<sup>1</sup> provided that a school district meeting certain requirements could become nonoperational for no more than three years and receive, in lieu of all other state payments, an amount equal to the per-student payment determined under N.D.C.C. § 15.1-27-04, multiplied by the number of students residing in the district, less an amount raised by 32 mills. At the conclusion of the three-year period, the statute required the nonoperational district to dissolve or reorganize.<sup>2</sup> According to your letter, the District decided to become nonoperational for the 2004-05 school year, expecting to receive the state payments for the following two school years.

The 2005 Legislature repealed N.D.C.C. § 15.1-27-33.<sup>3</sup> You indicate that no provision was made to grandfather in the District or otherwise delay the August 1, 2005, effective date of the bill. Notwithstanding that, you indicate that the legislative history demonstrates that the Legislature intended Mantador to receive the payments for the 2005-06 and 2006-07 school years.

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<sup>1</sup> 2001 N.D. Sess. Laws ch. 181, § 11.

<sup>2</sup> N.D.C.C. § 15.1-27-33(6).

<sup>3</sup> S.B. 2084, 2005 N.D. Leg.; 2005 N.D. Sess. Laws ch. 172, § 1.

When a statute is ambiguous, the statutory rules of construction permit the use of extraneous sources, including the legislative history, to determine legislative intent.<sup>4</sup> If the statutory language is clear and unambiguous, that language cannot be disregarded under the pretext of pursuing the legislative intent because the intent is presumed to be clear from the face of the statute.<sup>5</sup> Senate Bill 2084 as enacted provides:

AN ACT to repeal section 15.1-27-33 of the North Dakota Century Code, relating to nonoperating school districts.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. REPEAL.** Section 15.1-27-33 of the North Dakota Century Code is repealed.

The language is clear and unambiguous. It cannot be disregarded under the pretext of pursuing the legislative intent. Because Senate Bill 2084 repealed N.D.C.C. § 15.1-27-33, it is my opinion the Superintendent of Public Instruction may not make the payments provided for under that section to the District.

You also indicated that the District decided to become nonoperational based on the expectation that, under the law in effect at the time, the payments would continue for three years. You further asked in a telephone conversation with a member of my staff whether the District has a right to continue receiving payments because it made its decision to become nonoperational based on the law in effect at the time.

In the absence of specific constitutional prohibition to the contrary, every legislature has complete power and authority to enact, amend, and repeal legislation passed at previous sessions and cannot be bound by legislative action taken at a previous session.<sup>6</sup> In N.D.A.G. 87-16, this office said:

[N]o person has a “vested right in an existing law which precludes its change or repeal. . . .” Harsha v. City of Detroit, 246 N.W. 849, 851 (Mich.

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<sup>4</sup> N.D.C.C. § 1-02-39; N.D.A.G. 2006-L-03.

<sup>5</sup> District One Republican Committee v. District One Democrat Committee, 466 N.W.2d 820, 824-25 (N.D. 1991); N.D.A.G. 2005-L-46.

<sup>6</sup> Asbury Hospital v. Cass County, 7 N.W.2d 438, 452 (N.D. 1943) (citing Newton v. Commissioners, 100 U.S. 548, 559 (1879) (every succeeding legislature possesses the same jurisdiction and power as its predecessors including the power to repeal and modify – a different result would be fraught with evil)); N.D.A.G. 87-16.

1933). The United States Supreme Court in Patterson v. Colorado ex rel Attorney General, 205 U.S. 454, 461 (1907), stated: “[t]here is no constitutional right to have all general propositions of law once adopted remain unchanged.” The Supreme Court has also stated that “legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.” Usery v. Turner Elkhorn Mining Company, 428 U.S. 14, 16 (1976) (citations omitted).<sup>7</sup>

Furthermore, municipal corporations generally have no private powers or rights against the state.<sup>8</sup> As stated by the U.S. Supreme Court:

A municipality is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the state exercising and holding powers and privileges subject to the sovereign will.<sup>9</sup>

Unlike the power of the state over private persons or entities, the power of the state over the rights of political subdivisions is unconstrained by the contract clause and the Fourteenth Amendment.<sup>10</sup> Consequently, a political subdivision acting in its governmental capacity can generally possess no vested right as against the state.<sup>11</sup> Therefore, it is my opinion that the District has no right to continue receiving the payments previously authorized under N.D.C.C. § 15.1-27-33.

Sincerely,

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<sup>7</sup> N.D.A.G. 87-16. See also N.D.A.G. 93-L-267 (Legislature had the authority to change the ability of schools to grant tuition waivers; the new law applied to school districts that made their decisions to close and grant waivers prior to the effective date of the new law).

<sup>8</sup> Douglas County v. Industrial Commission, 81 N.W.2d 807, 810 (Wis. 1957) (legislature could retroactively take away the county’s right to offset benefits payable to widow).

<sup>9</sup> City of Trenton v. State of New Jersey, 262 U.S. 182, 187 (1923); cf. State ex rel. City of Minot v. Gronna, 59 N.W.2d 514, 529 (N.D. 1953); Minot Special School District No. 1 v. Olsness, 208 N.W. 968, 971 (N.D. 1926) (a school district has only the powers given to it by the Legislature).

<sup>10</sup> City of Trenton, 262 U.S. at 188; Olsness, 208 N.W. at 970; Douglas County, 81 N.W.2d at 810.

<sup>11</sup> Douglas County, 81 N.W.2d at 810.

LETTER OPINION 2006-L-10  
March 22, 2006  
Page 4

Wayne Stenehjem  
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>12</sup>

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<sup>12</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).